IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 6TH OCTOBER 2006 / 14TH ASWINA 1928

CRL.A.No. 1029 of 2001(C)

ST.785/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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APPELLANT:

K.NARAYANAN EZHUTHASSAN,
SON OF VELU EZHUTHASSAN,
KAITHASSERY HOUSE,
KALLIPADAM DESOM,
KARAKKAD AMSOM,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SMT.PREETHY KARUNAKARAN
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE

RESPONDENTS:

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1. M.T.NARAYANAN, SON OF RAMAN,
MANGATTIL HOUSE,
KALLIPADAM, SHORNUR-2,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, K.S.SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A. No. 1029 of 2001(A)

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Dated this the 6th day of October, 2006

J U D G M E N T

The complainant in S.T.No.785/1998 on the file of the Judicial Magistrate of the First Class, Ottapalam, is the appellant. The complainant preferred the complaint, under Section 138 of the Negotiable Instruments Act, in short 'the Act', before the court below. Exhibit P1 is a cheque for an amount of Rs.25,000/-. It is dated 25/05/1997. The lower court has doubted the whole transaction as the evidence brought out revealed that there was a civil suit between the parties for an amount of Rs.20,000/-, based on a promissory note dated 04/04/1996. Exhibit P1 cheque is dated 25/05/1997. The court below have elaborately discussed the evidence and came to a conclusion that the first respondent-accused, had demanded an amount of Rs.25,000/- on 09/05/1997, the previous day of paying of Rs.25,000/-, to the accused. But the money was not available with the complainant, as stated by him. Hence, he did not give

the loan on the date of demand and gave only on the next day. However, PW.1, the appellant, deposed that he was having Rs.30,000/- in his possession, being the sale proceeds of timber. But there is no explanation from him, why he did not pay Rs.25,000/-, when demanded by the accused, on 09/05/1997 itself, if he had money with him. The further evidence of the appellant, is that Exhibit P1 cheque was issued by the accused on the same day itself, putting the date of cheque as 25/05/1997. The trial court found that the amount in Exhibit P1 cheque is covered by the promissory note for Rs.20,000/-, which was issued on 04/04/1996.

2. The learned counsel for the appellant submitted that both the transactions are entirely different. I have gone through the evidence of PW.1. I find that there are contradictory versions of PW.1 in the evidence regarding the transaction of Exhibit P1 cheque amount as well as the promissory note amount of civil suit.

3. First respondent, though, received the notice, is not represented before me. This appeal has been pending for long. Merely, because, the respondent--accused is not present, I

am not inclined to pass an order in favour of the appellant. On going through the entire material, I am of the view that an opportunity be given to both the parties, to adduce additional evidence so that the court could arrive at a definite finding as to Exhibit P1 cheque for Rs.25,000/- dated 25/05/1997 and the promissory note covered in the civil suit dated 04/04/1996 are for the one and the same transaction. The court shall follow the principles contained in **Narayana Menon vs. State of Kerala** [2006(3) KLT 404 (SC)], particularly, paragraphs 35, 36, 39 etc..

4. Therefore, I set aside the impugned judgment and restore S.T.No.785/1998 on the file of Judicial Magistrate of the First Class, Ottapalam.

5. The parties shall appear before the court below on **27/10/2006**. The learned Magistrate shall give an opportunity to both sides, to adduce additional evidence. Basing on the entire evidence, the learned Magistrate shall hear both sides and dispose of the matter, according to the law, at the earliest, as the matter is of the year 1997.

Appeal is disposed of as above.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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Crl.A. No. 1029 of 2001(A)

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J U D G M E N T

6th October, 2006